



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF R-H-

DATE: JULY 17, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a legal processor for a district attorney's office, seeks classification as an individual of exceptional ability. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is normally attached to this immigrant classification. *See* § 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Nebraska Service Center denied the petition, finding that the Petitioner did not qualify for classification as an individual of exceptional ability, and that he had not established that a waiver of a job offer requirement would be in the national interest.

On appeal, the Petitioner contends that he is an individual of exceptional ability and that his work as a legal processor is in the national interest.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences arts or business. Because this classification normally requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act states, in pertinent part:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will

substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General¹ may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the following six evidentiary criteria, of which an individual must meet at least three in order to qualify as an alien of exceptional ability in the sciences, the arts, or business:

(A) An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability;

(B) Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought;

(C) A license to practice the profession or certification for a particular profession or occupation;

(D) Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability;

(E) Evidence of membership in professional associations; or

(F) Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

¹ Pursuant to section 1517 of the Homeland Security Act of 2002 ("HSA"), Pub. L. No. 107-296, 116 Stat. 2135, 2311 (codified at 6 U.S.C. § 557 (2012)), any reference to the Attorney General in a provision of the Act describing functions that were transferred from the Attorney General or other Department of Justice official to the Department of Homeland Security by the HSA "shall be deemed to refer to the Secretary" of Homeland Security. *See also* 6 U.S.C. § 542 note (2012); 8 U.S.C. § 1551 note (2012).

Only those who demonstrate “a degree of expertise significantly above that ordinarily encountered” are eligible for classification as individuals of exceptional ability. 8 C.F.R. § 204.5(k)(2).

II. ANALYSIS

The record reflects that the Petitioner is currently working in the field of law enforcement as a legal processor for the [REDACTED] District Attorney’s office, in [REDACTED] California. He seeks eligibility as an individual of exceptional ability based upon his work in law enforcement. The Director found that the Petitioner meets the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A) as he earned a bachelor’s degree in criminal justice [REDACTED] but that he did not meet any of the remaining relevant evidentiary criteria. On appeal, the Petitioner maintains that the Director “overlooked” evidence in the record and requests a “fair and thorough review” of the appeal and evidence.

We have reviewed the record in its entirety. As discussed below, we find the evidence does not establish that the Petitioner meets at least three of the six regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii).

A. Evidentiary Criteria for Exceptional Ability

An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(A).

The Petitioner submits an official academic record showing that, in 2014, he earned a bachelor of science in criminal justice from [REDACTED]. Accordingly, we agree with the Director that the Petitioner has established that he meets this regulatory criterion.

Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought. 8 C.F.R. § 204.5(k)(3)(ii)(B)

The Petitioner did not submit evidence of this criterion.

A license to practice the profession or certification for a particular profession or occupation. 8 C.F.R. § 204.5(k)(3)(ii)(C).

The Petitioner indicates that he meets this criterion based upon his receipt of a certificate of achievement in law enforcement from [REDACTED]. The certificate reflects that he completed an occupational training program consisting of 18 credit hours, but it is not a license to practice or a certification for a profession or occupation. Thus, he does not meet this criterion.

Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(D).

The Petitioner provided paycheck receipts indicating that he earned \$1,685.00 biweekly for several months in 2015, and asserted that his salary is indicative of his exceptional ability because he earns “the maximum amount allowed for a legal processor position.” He does not offer comparative statistics or other evidence to support this assertion, and he acknowledges on appeal that his salary evidence does not demonstrate exceptional ability. Accordingly, the Petitioner has not established that he meets this regulatory criterion.

Evidence of membership in professional associations. 8 C.F.R. § 204.5(k)(3)(ii)(E).

The Petitioner offers a membership certificate in the [REDACTED] awarded while he was a student at [REDACTED]. He did not provide the membership requirements or otherwise indicate that the association is for professionals and not criminal justice students. He also seeks eligibility under this criterion based upon his membership in the [REDACTED] Employees’ Retirement Association. He did not, however, offer sufficient evidence indicating that this organization qualifies as a professional association. For these reasons, the Petitioner has not demonstrated that he meets this regulatory criterion.

Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations. 8 C.F.R. § 204.5(k)(3)(ii)(F).

The Petitioner contends that he meets this criterion based upon his receipt of two commendation letters from the [REDACTED] Board of Supervisors in recognition for his work as a legal support intern. The resolutions note that the Petitioner has been a “valuable asset” to [REDACTED] and that he has demonstrated “exemplary dedication.” The Petitioner has not established that his work as a legal support intern provided to a county prosecutor’s office constitutes “achievements and significant contributions to the industry or field.” While both commendations are complementary of the Petitioner’s work, they do not explain how he has made significant contributions to the field of criminal justice beyond his work as an intern for the county prosecutor’s office. While the Petitioner has established that he achieved successful job performance and performed commendable work for his employer, he has not documented how his work represents achievements and significant contributions to the industry or field as required.

Accordingly, the evidence does not establish that the Petitioner meets at least three of the six regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii). Further, a review of the record in the aggregate does not support a finding that he has achieved the level of expertise required for exceptional ability classification.

B. National Interest Waiver

The remaining issue is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, is in the national interest. As previously outlined, in order to qualify for a national interest waiver, the Petitioner must first show that he qualifies for classification under section 203(b)(2)(A) of the Act as either an advanced degree professional or an individual of exceptional ability. The Petitioner does not claim, nor does the record demonstrate, that he is an advanced degree professional and, as discussed above, he has not shown that he is eligible for classification as an individual of exceptional ability. As the Petitioner has not established eligibility for the underlying immigrant classification, the issue of the national interest waiver is moot.

III. CONCLUSION

The Petitioner has not demonstrated that he qualifies for classification as an individual of exceptional ability under section 203(b)(2)(A) of the Act.

ORDER: The appeal is dismissed.

Cite as *Matter of R-H-*, ID# 590379 (AAO July 17, 2017)